

DATE: January 25, 2022
TO: Angelo Planning Group (APG) and Bend City Staff
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SUBJECT: Stevens Road Tract Concept Plan: Affordable Housing Memorandum

Background

The Stevens Road Tract encompasses 261 acres of property east of the Stevens Ranch Master Plan site and 27th Street. It is bound by Stevens Road to the north and the Stevens Ranch Master Plan site to the west. To the east, open space and a large rocky ridgeline separates this area from rural land and homes. To the south is a county landfill that is expected to close by 2029, with a recycling transfer station remaining on site.

The Stevens Road Tract Concept Plan will set conceptual planning guidance for future development on the property. The plan will establish the foundation for expanding the Bend Urban Growth Boundary (UGB), future planning amendments in the Bend Comprehensive Plan, property sale, master plan work, and eventual development of the site based on the requirements of the 2021 House Bill 3318 (HB 3318). Development of the property is subject to future agreements and intergovernmental coordination between the City of Bend, Department of State Lands, and Department of Land Conservation and Development.

HB 3318 sets planning requirements for the development of this property. Relevant to this memorandum, HB 3318 requires certain amounts of land in the Stevens Road Tract to be dedicated for affordable housing. Specific details of these requirements are addressed later in this memorandum.

Financing Affordable Housing

Developing new housing that is affordable for households earning less than 60 percent of area median income (AMI) nearly always requires public subsidy. The private market can sometimes deliver new housing affordable at 80 percent of AMI, but generally only in low-cost areas and/or with incentives. This section describes the most likely funding/financing programs to support affordable housing development on the site because ensuring that there is a realistic mechanism to fund the affordable housing and aligning plans and policies to fit with the priorities and requirements of these programs will ensure the required affordable housing can be built.

Low Income Housing Tax Credit (LIHTC) program

The primary tool in the United States for developing and preserving affordable housing is the Low-Income Housing Tax Credit (LIHTC) program. This program enables the funding of affordable housing through raising equity to contribute to a project in exchange for federal tax credits. The program requires that all units benefiting from the equity investment restrict rents to an average of 60% AMI across the entire development. Rent is then set based on 30% of the

household's income. In Bend, 60% AMI is equal to approximately \$48,000 in annual income.¹ A social worker, nursing assistant, recreation worker, photographer, or a retail sales associate, depending on the household size, would all qualify for a unit in a LIHTC development.

Under LIHTC there are two equity programs. The differences in program priorities and funding amounts affect how they could apply to affordable housing development on the Stevens Road Tract.

LIHTC 9% Program

LIHTC 9% tax credits are highly competitive and are generally reserved for projects providing housing for the lowest income households or other priority groups. They are allocated by the State Housing Agency – Oregon Home and Community Services (OHCS) – and subject to an annual volume cap set by the U.S. Congress. In Oregon, these credits are reserved for OHCS priorities such as Permanent Supportive Housing (PSH), housing that targets specific special needs populations, or housing projects located in high opportunity areas (i.e., proximity to high job concentrated centers, well-performing schools, or that have a higher income rate than comparable census tracts). The 9% LIHTC equity funds approximately 70% of a project's total development cost.

LIHTC 4% Program

The 4% LIHTC program provides tax credits to construct, rehabilitate, or acquire and rehabilitate qualified low-income rental housing usually through the issuance of tax-exempt bonds. In Oregon, OHCS currently issues these credits in two ways: through a competitive Notice of Funds Availability (NOFA) process; or through a non-competitive application process. However, given the increase in demand for the 4% credits, the program is becoming more competitive, and the State is adjusting its process accordingly.² An award of 4% LIHTCs covers approximately 30% of a project's development or rehabilitation cost, requiring several other sources of financing to make a project financially feasible.

Deed-restricted affordable housing

Rentals

Beyond LIHTC, cities and other jurisdictions often leverage land or other resources to incentivize developers to provide set-asides of deed-restricted affordable housing units to households earning below the median income. In some cases, deed-restricted units are produced as part of a market-rate development whereby the developer is incentivized or required through land conveyance to provide a portion of deed-restricted affordable units as part of a larger development. This is often achieved through a combination of tax exemptions or abatements, below market price land sale or ground leases, or allowing variances to the local zoning code to reduce costs, such as reduced on-site parking requirements. A deed restriction

¹ <https://www.bendoregon.gov/government/departments/economic-development/affordable-housing-program/developer-resources>

² <https://housingoregon.org/ohcs-survey-to-help-plan-future-changes-to-4-lihtc-program>

can apply to both rental and homeownership projects. However, the incentive structure differs between rental and homeownership projects.

Homeownership

There are at least two recognized models that are typically used to deliver lower-cost homeownership affordable housing. Habitat for Humanity is one of the most well-known. Their model is focused on detached single-family homeownership in areas with low land costs or restrictive zoning that limits options for attached housing and attached single-family homeownership (townhouses) in areas with high land costs and suitable zoning regulations. They generally require the participation of the prospective homeowner in the construction process. Habitat for Humanity's units are often deed-restricted to limit the sale price of the unit to ensure the unit remains affordable. The other homeownership model involves a Community Land Trust (CLT). These are mission-driven nonprofits focused on providing affordable housing and managing the land to ensure long-term affordability. CLTs develop homeownership units by leveraging local and State resources to finance the construction of units and manage the for-sale process with prospective buyers. These units are typically deed-restricted to limit the sale price to maintain affordability.

Local policies that support affordable housing

The City of Bend has some financial tools that can assist in incentivizing affordable housing and influencing financial feasibility.

- **Affordable Housing Fund.** The City of Bend levies a Construction Excise Tax on the value of building permits that goes towards supporting the development of affordable housing. Currently, the fund is used to acquire land for deed-restricted affordable housing, develop the land, construct homes, or rehabilitate homes.
- **Community Development Block Grants (CDBGs).** Each year the City of Bend allocates some of its CDBG funds to affordable housing projects being developed by nonprofit affordable housing providers.
- **City Surplus Property.** Bend routinely sells or conveys some of its excess land holdings to affordable housing providers.
- **Low-Income Rental Property Tax Exemptions.** The City awards a 20-year renewable property tax exemption to qualifying affordable rental housing projects.
- **System Development Charge Exemptions.** All City system development charges (SDCs) are exempted for deed-restricted units at or below 80% of AMI. (Parks SDCs charged by Bend Parks and Recreation District are not exempted.)

Siting Considerations for Affordable Housing

Many factors can influence the siting of a LIHTC affordable housing development. One of the primary factors is whether the prospective development will meet the daily needs of residents.

One fundamental criterion for the siting of affordable housing is to acknowledge that lower-income households have the same basic needs and demands for their housing as market-rate residents. Their housing costs need to fit within their budget leaving enough income to cover food, transportation, and other necessary expenses. Lower-income households who reside in areas where there is a lack of transportation alternatives must spend between 17 and 22 percent of their income on personal vehicles, a higher percentage of their income than moderate- and upper-income households.³ Therefore, the geographic location of any affordable housing development plays an important role to alleviate some of these non-housing expenses by providing accessibility to each residents' daily needs.

As is the case with market-rate housing, affordable housing residents want short commutes, proximity to grocery stores, shopping opportunities, entertainment, parks, recreation, childcare facilities, and quality schools. To provide accessibility to this array of goods and services, the affordable housing in the Stevens Road Tract should be located near reliable public transportation. This will allow residents to access the commercial and business districts of Bend and to reduce the expense on low-income families of having to rely on personal vehicles for all their transportation needs. It should also be integrated with or proximate to commercial uses within the development so that the goods, services, and amenities are close enough to residents to allow them to access these daily needs using alternative forms of transportation to automobiles, such as walking or biking. Housing density and a mix of housing types ranging from multifamily apartments to townhomes and single-family development can support the commercial business activity that will make the area more accessible and walkable, as discussed in the Market Assessment.

Form and Scale Considerations for Affordable Housing

Multifamily

Most of the affordable housing developed through the LIHTC program is multifamily rental housing. The density and construction type for affordable apartments tend to align with most of the apartment development in the same area. Most affordable housing in Bend is wood-frame construction, featuring heights between two and four stories. The form can range from stand-alone apartment buildings and multi-building garden-style apartments to townhome-style units.

In Bend, multifamily affordable housing has typically been developed on sites ranging from 1 to 5 acres with unit counts ranging between 50 and 200. The largest multifamily affordable housing development in Bend to date is on an 8.1-acre site and will provide 240 units to households earning up to 60% AMI. Larger projects within the wood frame construction type typically provide better efficiency (i.e., more units equal more income to the project).

³ The High Cost of Transportation in the United States. Institute for Transportation & Development Policy, 2019. Available here: <https://www.itdp.org/2019/05/23/high-cost-transportation-united-states/>

To produce housing, LIHTC developers need to achieve sufficient density to justify pursuing a project and to satisfy HUD and State requirements. The density of an affordable housing development should provide enough income to support any debt on the project while limiting costs and attracting other public financing sources to make the project financially viable.

Therefore, on 4% LIHTC projects, developers typically need to achieve a unit count close to or above 100 units. As a result, the LIHTC program traditionally has not produced much housing variety, outside of garden-style apartments or two-to four-story apartment buildings with on-site surface parking.

With the 9% LIHTC program and some other state funding programs, developments may be smaller (roughly 30 to 100 units) and sometimes take the form of cottage cluster or townhouse-style rentals, though many are garden-style apartments.

Most of the multifamily affordable housing developed in Bend in recent years has been built at between 20 and 30 units per acre. Most of these developments were on infill sites and were not part of any mixed-use development. Each project was required per local zoning to provide on-site parking and open space. In the Steven's Road Tract, it is possible that a higher density could be achieved. Since new master-planned communities are often mixed-use and require the development of public space such as parks, the Steven's Road Tract could create an opportunity to share parking facilities across uses or limit the open space requirements on each new housing development to reduce the costs on affordable housing development, which would help to make affordable housing more financially feasible. Additionally, assistance to cover infrastructure improvement costs associated with the property designated for affordable housing would help to make affordable housing more financially viable.

Townhouses and other “Middle Housing”

Affordable townhouses are common for affordable homeownership developments (e.g., Habitat for Humanity) in higher-cost areas when they are allowed by zoning. More recently, as the City has adopted a cottage code enabling the development of smaller detached homes, Bend has started to see more of this housing type used for affordable housing. Cottage clusters can be built for ownership or rental housing, but for affordable housing, they have more commonly been built as rentals to date. New rules allowing development and land division for duplexes, triplexes, and quadplexes will likely make these housing types common for affordable homeownership housing going forward as well.

The City's recently adopted middle housing regulations allow townhouses, duplexes, triplexes, and quadplexes at densities up to about 40 units per acre, though most middle housing development is likely to achieve lower densities (e.g., 20-25 units per acre) due to setbacks and other requirements.

Single-family detached

Single-family homes are a common form of affordable homeownership development in low-cost areas where there are few other housing options, but in higher-cost areas, the subsidy required per unit makes it difficult to build single-family detached affordable housing.

If single-family detached affordable housing is built in the Steven’s Road Tract, it would likely be at the highest density allowed by zoning for detached homes in order to limit land costs per unit.

Meeting the HB 3318 Affordable Housing Requirements

As the City of Bend pursues design, infrastructure, housing type variety, and affordability goals as part of the Steven’s Road Tract master planning process, it must consider some of the trade-offs and incentives that will make affordable housing development successful. The following guidance is intended to inform master plan scenarios that explore the trade-offs and opportunities associated with developing affordable housing in the Stevens Road Tract while satisfying HB 3318.

HB 3318 requires the following acreages, income levels, and priorities for affordable housing:

Part	Acreage (min)	Income Level	Other requirements / provisions
A	12 net acres	60% AMI	Income averaging up to an average of 60% AMI consistent with state and federal LIHTC requirements allowed
B	6 net acres	80% AMI	Must give priority (if legally possible) to households where at least one person is employed by an education provider
C	2 net acres	80% of units at 80% of AMI	At least 1 net acre must give priority (if legally possible) to households where at least one person is employed by an education provider

The following sections provide considerations for approaching affordable housing development to satisfy HB 3318.

A: Twelve acres at 60% AMI or less

The lowest-income units are likely to be in multifamily family apartments partially financed through the LIHTC program. As noted above, LIHTC is the main source (often the only source) of equity to produce low-and extremely low-income units in Oregon. While it is possible that a portion of the 12 acres may obtain a 9% LIHTC award, it is highly unlikely that all 12 acres would qualify for a 9% LIHTC award. The 9% LIHTC program is highly competitive, with OHCS only allocating these credits to less than 20 projects statewide each year. The awards often go to projects that meet a variety of State goals and score high on the Qualified Allocation Plan (QAP). If one were to be funded in this area, it might be on two to four acres given that 9% LIHTC projects tend to be smaller than those using the 4% tax credit. Based on scoring factors in the competitive award process for 9% LIHTC credits, it is more likely that a 9% LIHTC project would be built last after the area has been largely developed in order to get the high walkability scores and meet the employment and amenity access criteria needed to receive an award.

It is more likely that affordable housing development would utilize the 4% LIHTC program. Even though 4% LIHTC credit projects tend to be larger, a 12-acre project is unlikely. Instead, the 12 acres will likely be broken into two to three projects that are phased over time in increments of 4 to 6 acres each. This ensures that the projects do not compete against each other

for LIHTC funding and makes it more likely that the City will be able to help close the financing gaps associated with LIHTC affordable housing development.

The City can play an important role in making LIHTC development more viable in several ways:

- Nearly all 4% LIHTC projects require other funding sources to make development possible, and the growing cost of construction means that State and local governments must play a larger role in funding to make development financially feasible. The City's financial incentives and local funding can help fill funding gaps for these projects.
- Parking is a major hurdle for LIHTC developers. Fortunately, in Bend, a parking reduction from 1.5 stalls per unit to 1 stall per unit is provided for multifamily units restricted to 60% AMI or less, though this may still be higher than needed. Excessive parking requirements particularly impact LIHTC development because, unlike market-rate multifamily development, LIHTC projects are not allowed to charge tenants for parking unless the parking is developed separately from the LIHTC development. This means that parking adds cost to the development but does not increase the revenues, increasing funding gaps. On-site surface parking lots are the cheapest form of parking but take land away from housing, limiting the potential density and amount of housing that will fit on a given site. Parking reductions and shared parking opportunities across uses and facilities can reduce parking's impact on the cost to build affordable housing and the number of units that can be built on the 12 acres.

B: Six Acres at 80% AMI or Less, with Priority to Educators

Delivering Housing Affordable at 80% of AMI

Providing housing at 80% AMI is typically quite challenging. Middle-income units usually lack adequate subsidy programs to deliver housing to this AMI. There are several potential options for this land, but all have challenges:

- The LIHTC program allows for income averaging, which can enable some units at 80% AMI, provided that the entire project averages 60% AMI. This means that some units may be leased at 80% AMI, but then other units would need to be reserved for very low-income households at 40% AMI. This means that the six acres at 80% of AMI could be provided through an additional LIHTC project. However, the requirement that units on six acres be made available to households in which at least one member is employed by an education provider may create issues with fair housing law. Staff expects this option to be the most viable.
- The City can provide the land for little or no cost and offers SDC exemptions for this income level. It could also provide some local funding. However, staff does not anticipate that City resources alone would be enough to make a six-acre project financially feasible at 80% of AMI.
- The State could theoretically require the market-rate portion of the development to deliver a reasonable quantity and density of deed-restricted units equivalent to six acres

as a condition of the land sale for the private development rather than providing the six acres to the City. However, based on the way HB 3318 is written and the way that the land transactions are anticipated to occur, this is not likely to be an option.

Prioritizing Educators

Since the sale proceeds of the market rate land portion of Stevens Road Tract will go directly to the State Common School Fund, land designated for affordable housing development reduces revenue to the fund. However, the acres designated by HB 3318 to be made available to households earning 80% AMI in which at least one person is employed by an education provider are intended to provide a different benefit to public schools.

This requirement could create a legal challenge under fair housing law: housing preference policies can be challenged in court if they have a disparate impact based on race, color, national origin, religion, sex, familial status, source of income, and disability. For example, if the preference policy gives a group with a lower percentage of minorities than the community at large priority for housing, this can be considered a disparate impact.⁴ Thus, careful attention to fair housing considerations will be required in implementing this requirement.

The other challenge is whether enough applicants employed by education providers would apply or income qualify to be able to lease the units. Typically, when leasing to priority groups, an application window is allowed to give the priority group the first opportunity to apply or be selected first out of a larger pool of applicants based on their employer. Once that period ends other applicants would then be allowed to lease units. It would be easier to implement to ensure flexibility on leasing units if leasing priority were granted to those employed by education providers across some or all affordable housing projects in the Stevens Road Tract if this can be done in a way that is consistent with fair housing law.

C: Two acres with 80% of Units at 80% AMI or less, with Priority to Educators on one Acre

Delivering Housing with 80% of Units at 80% AMI or Less

As noted above, delivering housing affordable at 80% of AMI can be a challenge. The specific requirements for this section of the bill were designed based on an affordable homeownership model used by a local community land trust, in which one in five units is available to households earning up to 120% of AMI and the remainder are restricted to households earning up to 80% of AMI. While a rental model may be possible, it is unlikely given available financing models. Instead, this acreage is assumed to be delivered as deed-restricted affordable homeownership. Market-rate developers would be unlikely to take on this type of development, given the challenges associated with delivering and maintaining affordable homeownership (e.g., determining whether a household can both income qualify and be approved for a mortgage while providing an adequate down payment to purchase the home,

⁴ "Fair Housing Implications of "Essential Workforce" Housing," John Relman Esq. & Reed Colfax Esq., <https://www.relmanlaw.com/assets/htmldocuments/Fair-Housing-Implications-of-%E2%80%9CEssential-Workforce%E2%80%9D-Housing.pdf>

and determining how much to restrict the resale price so that other 80% AMI households can purchase the home in the future). Nevertheless, public funding for the development of homeownership units may be limited and a CLT may also find it challenging to leverage non-public funds to construct these units.

Prioritizing Educators

Many of the same considerations apply for prioritizing educators for affordable homeownership opportunities as discussed above for the 80% AMI affordable housing.

Implications for Scenarios

For purposes of evaluating scenarios, the affordable housing component should include the following assumptions:

- The 12 acres at 60% of AMI will be mostly or entirely multifamily apartments built through the 4% LIHTC program, but density could vary based on parking requirements, need for on-site open space, and available gap financing. A small portion of the 12 acres at 60% of AMI (e.g., 2-4 acres) could possibly be built with a middle housing form, though this is not the most likely outcome.
- The 6 acres at 80% of AMI will most likely also be multifamily apartments funded through LIHTC. The same considerations related to density, parking, on-site open space, and gap financing apply to these acres as well as the 12 acres at 60% of AMI. Even if the source of funding/subsidy changes, multifamily rental housing is still the most likely form for this housing.
- The 2 acres with 80% of units at 80% of AMI will likely be affordable homeownership as small, detached homes or middle housing types delivered by a community land trust.